NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2019] NZLCDT 22

LCDT 008/19

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**AUCKLAND STANDARDS COMMITTEE No. 2** Applicant
AND	**NOLA DANGEN** Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr W Chapman

Mr W Smith

Mr B Stanaway

Ms S Stuart

DATE OF HEARING 6 August 2019

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 14 August 2019

COUNSEL

Mr E McCaughan for the Standards Committee

Mr W Pyke for the Practitioner

RESERVED REASONS OF THE TRIBUNAL FOR PENALTY ORDERS MADE 6 AUGUST 2019

Introduction

[1] This decision provides reasons for the penalty imposed on a practitioner who has admitted a single charge of negligence. The negligence, found to be so serious "as to tend to bring the profession into disrepute"[1] was in connection with her conduct as a property manager and welfare guardian for an elderly woman suffering from dementia.[2]

[2] The practitioner, Ms Dangen, had sworn three affidavits in relation to the PPPR application which were inaccurate, having regard to her subsequent conduct. Ms Dangen had charged significant fees for her attendances, without having been authorised by the Court, and in respect of some attendances which could not have been authorised by the Court. Additionally, she advanced $20,000 as a loan to a family member of the protected person, without any authority to do so.

Issues

1. What are the applicable principles of penalty in relation to this matter?

2. What is the level of culpability of the practitioner on the continuum of negligent conduct?

3. Are there any aggravating features?

4. What mitigating factors exist, and what weight can they be given in these circumstances?

5. Are there comparable cases which assist the Tribunal in assessing the proper level of penalty?

---

[1] Section 241(c) Lawyers and Conveyancers Act 2006 (LCA).
[2] The practitioner's appointment was made under the Protection of Personal and Property Rights Act 1988 (PPPR).

6. Can any penalty or combination of penalties properly reflect the seriousness of this matter, short of a period of suspension of the practitioner from practice?

Procedural History

[3] Briefly, the original charges faced by Ms Dangen were three alternatives, misconduct, negligence or incompetence, or unsatisfactory conduct relating to the same alleged conduct.

[4] Following discussions between counsel, an agreed set of particulars was provided to the Tribunal, in support of an amended charge of negligence only. Leave was sought to withdraw the two alternate charges of misconduct and unsatisfactory conduct. Ms Dangen's counsel indicated a guilty plea to such an amended charge.

[5] The Tribunal considered that this was one of those cases which could be seen as fitting within the overlap of culpability levels. In other words, it could have been viewed as either misconduct (not at the highest level), or alternatively as "high-end" negligence.

[6] Having carefully considered the matter, the Tribunal determined that the amendment to reflect a charge of negligence only, properly reflected the facts and culpability in this matter and leave was granted accordingly.

[7] We confirmed that determination of culpability level cannot have regard to the lawyer's professional history, (whether unblemished or otherwise), which is properly addressed at the penalty stage of the hearing.

[8] The amended charge and supporting particulars are annexed as Appendix I to this decision.

Background

[9] In about March of 2014, Ms Dangen was approached by a lawyer colleague to act as a welfare guardian and property manager for Mrs KB. Mrs KB suffered from dementia and was in a residential care facility. Mrs KB's husband, Mr JB remained in the family home but wished it to be sold and to purchase a unit in a retirement village

in which Mrs KB could also be housed. This would enable him to visit her daily and maintain regular contact.

[10] Mr and Mrs B had one son, Mr Kevin B.

[11] Sometime earlier, the joint ownership of the family home had been severed and the B's registered as tenants in common in equal shares. This had been facilitated by Mr Kevin B who had previously held power of attorney for his mother Mrs KB. That power of attorney was relinquished by Mr Kevin B when Mr JB brought the PPPR proceedings in respect of his wife. There were, at that stage, difficulties between Mr JB and his son Mr Kevin B.

[12] Because of the previous family difficulties, a previous lawyer who had been approached to act as welfare guardian and property manager for Mrs KB had declined to accept the appointments.

[13] Ms Dangen was informed of this before agreeing to take on the roles.

[14] In support of the applications under the PPPR Act, the solicitor acting for Mr JB prepared three affidavits for Ms Dangen to swear. They contained similar material, but the important features of the affidavit are that Ms Dangen:

- swore she was "… *a solicitor with many years of experience in this area* …".

- she further swore "*I confirm that I am aware that I am not entitled to remuneration for my services unless directed by the Court at the time of making this order or any subsequent order*"; and

- "*I confirm that I do not seek remuneration for my services*"; and

- "*I confirm that all expenses reasonably incurred by me as a manager can be charged against the payable (sic) out of the property of (Mrs KB)*"; and

- "*At this stage I do not envisage any expenses that are likely to be incurred in managing (Mrs KB's) property*"; and

- *"I confirm that I am aware of my responsibilities to prepare and file in the Court statements containing prescribed particulars as referred to in Section 45 of the Act as to (Mrs KB's) property* …". And the relevant statutory periods are then set out after that statement.

[15] Ms Dangen was asked to swear the affidavits on an urgent basis to comply with a Court filing timetable. She says that she raced over to the North Shore, without discussion collected the affidavits from the lawyer who had prepared them, and was directed next door to another lawyer for swearing. Ms Dangen asserted in evidence that, apart from checking for the correctness of her name, she did not read the affidavits before signing them and then swearing that they were truthful.

[16] Contrary to the statement that she had many years of experience in this area (which a Court could be taken to expect meant in relation to the obligations of a welfare guardian and property manager) Ms Dangen's only previous experience as a welfare guardian and property manager had been some 20 years earlier.

[17] Also contrary to the very clear words of the affidavit about remuneration, it was never Ms Dangen's intention to provide her services without remuneration.

[18] Ms Dangen was appointed Mrs KB's Property Manager and Welfare Guardian.

[19] Over two-and-a-half years from 1 April 2014 to 17 September 2016 Ms Dangen rendered invoices and was paid a total sum of over $62,000. She says that she carried out, on average, four hours of work for Mrs KB per month. This was charged at $400 per hour by Ms Dangen on all invoices except one (at $300 per hour).

[20] She was able to receive payment once the family home had been sold and Mrs KB's share of a little under $400,000 became available for Mrs KB's use. Ms Dangen's fees, which represented a relatively large proportion of Mrs KB's property were taken directly by the practitioner as she was able, as the appointed property manager.

[21] Ms Dangen's attendances included arranging for a more secure placement for Mrs KB, assisting with shopping for personal items, liaising with carers and hospitals,

and some brief attendances in relation to the sale of the former family home, although she did not act on the sale as solicitor. Ms Dangen also assisted physically relocating Mrs KB to her new residence in Tauranga.

[22] The practitioner did not keep accurate time and attendance records in relation to the services she provided to Mrs KB. In evidence she described these to us, and provided at the hearing a few pages of handwritten notes recording some times and attendances from her files. From these rather scanty records, it is apparent that many of the attendances were of a welfare guardian nature, rather than as property manager. Some might have crossed over both roles.

[23] There is no legal authority for a welfare guardian to charge for attendances or to recover anything other than expenses from a protected person.

[24] There is no legal authority to charge for professional attendances as a property manager unless authorised to do so by the Court.

[25] In the course of the hearing in June 2014, at which Ms Dangen was appointed property manager (and which she attended in person), the Judge provided counsel for the applicant with a list of the relevant powers for a property manager and asked that she indicate which of those were sought so that orders could be made immediately.

[26] The power to charge was <u>not</u> one of the orders made by the Court. That of course is consistent with Ms Dangen's sworn affidavits to the Court, which indicated that she was not seeking remuneration in respect of her services.

[27] Ms Dangen claims she was not aware of her inability to charge for her services until the complaint was made to the Law Society. Ms Dangen's counsel has provided correspondence from counsel for the subject person and counsel for the applicant in the PPPR application, indicating that it would be normal for a professional property manager to be able to obtain remuneration. There is no comment of course on the issue of a welfare guardian obtaining remuneration.

[28] The latter, as well as the overall ability of Ms Dangen to charge in this matter was addressed in an affidavit from an expert called by the practitioner, Mr Alan

Gluestein. He confirmed that there is a prohibition on charging for welfare guardian services but acknowledged that some practitioners were confused about this. He also confirmed the established law that a property manager cannot charge for services unless so authorised by the Court.

[29] Mr Gluestein also confirmed that under the powers that Ms Dangen had as property manager, she had no authority to advance the $20,000 loan to Mrs KB's niece.

[30] The $20,000 loan to Mrs KB's niece was thought proper by Ms Dangen because it was to enable her to buy a reliable car in order to visit Mr and Mrs B once they relocated to Tauranga. It was Ms Dangen's evidence that she was the only person visiting them and needed to be able to do so on approximately a fortnightly basis with a reliable vehicle. Ms Dangen confirmed that she did not consider whether a lesser sum might also provide a reliable means of transport. Nor was she able to tell the Tribunal what vehicle had indeed been purchased or whether any receipt had been provided to her. The loan was made in July 2016.

[31] Unfortunately, the loan agreement prepared by Ms Dangen and signed by the niece provided for an interest-free loan payable on demand, but with five years allowed for such repayment after demand had been made. Given that Mrs KB died only two months after the loan was made, the terms mean that her estate has been disadvantaged by having to attempt to recover the loan.

[32] At the disciplinary hearing it was agreed between the practitioner and the complainant, Mr Kevin B, (who was the executor of Mrs KB's estate), that Ms Dangen would repay the loan and take an assignment of the loan on agreed terms, in order to rectify this significant disadvantage to the estate.

[33] Ms Dangen continued to act as property manager and welfare guardian for Mrs KB until her death in September 2016.

[34] Following Mrs KB's death, the executor of her estate, Mr Kevin B, complained to the New Zealand Law Society concerning the 13 invoices rendered by the practitioner totalling $62,292.08, and also complained about the $20,000 loan authorised and paid out by her.

[35] For some time, the practitioner resisted any inquiry by her professional body, stating that they had no jurisdiction and that such only resided in the Family Court under the PPPR Act. This point was subsequently referred to the Legal Complaints Review Officer, who ruled against her. Thus, the matter has been protracted from the complainant's point of view.

[36] Rather belatedly the practitioner has now, responsibly, accepted her culpability. We have referred already to the agreed payment and assignment of the loan. In addition to this Ms Dangen has written a sincere apology to Mrs KB's family. She also, just prior to the disciplinary hearing, repaid in full the $62,292.08 in fees that she had charged Mrs KB during her lifetime.

[37] A final matter which also needs to be noted is that on two occasions Ms Dangen failed to comply with her statutory filing obligations as property manager for Mrs KB. As the Standards Committee submits, in combination with the other failures, it is consistent with a demonstration of a high degree of negligence in the performance of her role.

[38] It is also noted that the practitioner was open in her manner of charging Mrs KB and that her invoices were declared in the annual statement provided to the Court.

[39] Likewise, the Committee accepts that Ms Dangen's making of the loan to Mrs KB's niece was made in good faith and in what the practitioner considered to be Mrs KBs best interests. However, beyond checking the terms of Mrs KB's will, she had not actually turned her mind to her authority to enter into such a loan on behalf of the protected person.

Issue 1 – Relevant Principles Concerning Penalty

[40] The general purpose of professional disciplinary proceedings are protection of the public. This includes the interests of the public in maintaining its confidence in the legal profession, the maintenance of professional standards, the imposition of

proper sanctions for breaches of professional standards and duties, rehabilitation and deterrence and denunciation when relevant.[3]

[41] In the present matter we accept the submission of Mr McCaughan that the relevant purposes are the maintenance of professional standards, the denunciation of the practitioner's conduct and general deterrence, namely the deterrence of other practitioners from similar offending.

Issue 2 – Level of Culpability

[42] The definition of negligence is now well established from the decision of *W v Auckland Standards Committee.*[4]

[43] Although that case considered the earlier statutory provision relating to negligence, the definition has subsequently been adopted in relation to s 241(c) LCA; as set out in counsel's submissions:

> "The Court ruled that the issue should be approached objectively, and that it was necessary to consider whether reasonable members of the public informed of all relevant circumstances would view the practitioner's conduct as tending to bring the professional into disrepute."[5]

[44] The three most concerning areas of the practitioner's conduct were as follows:

1. Swearing three inaccurate and misleading affidavits in the Family Court proceedings.

2. Her charging (at a significant level) of fees which she had no authority to charge.

3. Entering into the loan agreement which had significant long-term implications, when she was not authorised to do so.

---

[3] These purposes are included in the dicta in the leading decision on penalty such as *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] NZLR 850 and *Auckland Standards Committee 1 v Fendall* [2012] NZHC 1825, as well as in s 3 of the Lawyers and Conveyancers Act 2006 (LCA).

[4] *W v Auckland Standards Committee* [2012] NZAR 1071.

[5] Above n 4 at [45].

Number 1

[45] In relation to the first failure we consider that, as an officer of the Court, the practitioner has higher obligations than a lay person swearing an affidavit.

[46] This was an area which she now acknowledges to have been outside her normal area of practice. At the hearing before us she conceded not only had she not thoroughly read the affidavits but that in fact had really not read them at all.

[47] In a rushed environment, that is precisely the time that the responsibility to read, question and understand the powers and responsibilities that she was undertaking is the greatest. The rushed nature of the signing of affidavits is not a good reason for failing to uphold her duties as an officer of the Court. A cursory glance at each of the three short documents would have revealed that there was no ability to charge for the work being undertaken.

Number 2

[48] It is of significant concern that the practitioner felt able to charge at an hourly rate of $400 for what have must have been, at times, very low-level services, without having carefully checked her authority to do so. This is all the more important where there is no specific oversight (as with a client of full capacity), and the fees are being deducted without reference to another party.

[49] The practitioner points out that one of the annual statements was approved by the Public Trust Office. This was clearly not a comprehensive check on her actual attendances and ability to properly charge for her services.

Number 3

[50] It was the practitioner's evidence that before advancing the loan she checked the terms of Mrs KB's will and noted that there was provision for income from her estate to be used for the benefit of Mr JB. She saw the provision of the motor vehicle as being in the interests of both persons but did no further check as to her actual authority to make such an advance in terms of her powers under the PPPR Act.

[51] Additionally, there was the late filing of her reports as referred to under the heading 'Background'.

[52] In combination we consider these failures to be major ones and thus the reference to “high end negligence” in the opening paragraphs of this decision.

[53] These were not simple and understandable errors. Furthermore, they continued for a protracted period. In summary we consider the level of culpability to be at the very high end of the negligence spectrum. That is the starting point for assessing a proper penalty.

Aggravating Factors

[54] We consider the aggravating factor in this matter to be that the practitioner’s failures were in relation to her dealings with an elderly and vulnerable person. This was also a course of conduct which continued for two-and-a-half years.

Mitigating Factors

[55] There are a number of mitigating factors:

[a] The practitioner has been prepared to put right her failures by apologising and repaying the fees which she had invoiced and taken. In addition, she has made arrangements to repay and take assignment of the loan. She is given considerable credit for those steps.

[b] Her guilty plea, albeit at a very late stage, does indicate some understanding and acceptance of her failures in this matter. Although not an aggravating factor, maintaining a defensive approach for so long deprives her of what would have been a more strongly mitigating feature.[6]

[c] Her previous exemplary record as a practitioner. Ms Dangen has been in practice since 1984 and has had no prior adverse disciplinary findings. Indeed, she has herself served on professional and disciplinary bodies. She has also served in a voluntary way on professional bodies and community-based services. She is held in high esteem by her peers. Those are factors for which she can claim considerable credit.

[6] See dicta in *Daniels*, above n 3.

Comparable Cases

[56] Counsel were unable to refer the Tribunal to comparable cases, however, we consider the decision of *Waikato Bay of Plenty Standards Committee 1 v Monckton*[7] is a useful comparison.

[57] In that matter there was a relatively late plea to one charge of negligence which was considered at the serious end. In that matter also, the practitioner had a blemish free professional career of longstanding (34 years) and could call on numerous charitable activities and community service to her credit.

[58] Ms Monckton was suspended by the Tribunal for one month. The Tribunal referred to the *Daniels*[8] decision where it was held that "*members of the public who entrust their personal affairs to legal practitioners are entitled to know that a professional disciplinary body will not treat lightly serious breaches of expected standards by a member of the profession*". The Tribunal also took into account the least restrictive intervention affirmed in the *Daniels* decision.

[59] We consider that there are features in the present matter which demand a somewhat stronger response than in *Monckton*. In this matter there were multiple invoices issued by the practitioner, over two and a half years, for over $62,000. Ms Monckton acted for a client on one transaction and the negligence was in order to advance the client's instructions and not for her personal benefit.

[60] Further, in the present matter there are three distinct failures as opposed to the one negligently executed transaction involved in the *Monckton* matter.

[61] Finally, we consider there are fundamental responsibilities as a lawyer and officer of the Court which must be marked in this present matter. We consider there is a need to reinforce the responsibility of all lawyers in the swearing and filing of affidavits to ensure their accuracy and truth, upon which the Court will rely.

---

[7] *Waikato Bay of Plenty Standards Committee 1 v Monckton* [2014] NZLCDT 51.
[8] See above n 3.

Censure or Suspension?

[62] As part of the arrangement which produced the amended charge and agreed statement of facts, together with the guilty plea, the Standards Committee submitted that, in addition to recognising the significant sums that had been repaid by the practitioner, the penalties ought to be a censure, written apology and costs. This proposal was supported by counsel for the practitioner, Mr Pyke. Both counsel acknowledged that the Tribunal was not bound by the recommendation and both recognised that suspension was at least available as a "starting point" in penalty assessment.

[63] We consider that, having regard to the seriousness of the failures, the lengthy period for which they continued, and the multiple number of failures involved, that no penalty short of suspension will properly mark the Tribunal's denunciation nor provide general deterrence as required. For these reasons we decline to impose a censure since we consider that the suspension carries an implicit and obvious censure in these particular circumstances.

[64] We have deferred the commencement of the suspension because the practitioner has obligations to sole practitioners to undertake locum duties for them in the immediate future, and it would be unreasonable for those practitioners to find a substitute at such short notice.

[65] For all of the above reasons we made on 6 August 2019 the following orders.

Orders

1. The practitioner is suspended from practice for two months from 23 September 2019, pursuant to s 242(1)(e) and s 244(2)(c) LCA.

2. There will be costs in favour of the Standards Committee of an agreed sum of $22,000 payable by the end of August 2019, pursuant to s 249(3) LCA.

3. The Tribunal costs which are certified in the sum of $6,242 are payable by the New Zealand Law Society, pursuant to s 257 LCA.

4. The s 257 costs are to be reimbursed by the practitioner to the New Zealand Law Society, pursuant to s 249(3).

DATED at AUCKLAND this 14th day of August 2019

Judge D F Clarkson
Chair

Appendix I

Auckland Standards Committee No. 2 (**Standards Committee**) hereby charges Nola Dangen (**Practitioner**), of Auckland, that she committed a disciplinary offence under s 241 Lawyers and Conveyancers Act 2006 (**the Act**) in that she engaged in conduct that constituted:

(a) Negligence or incompetence in her professional capacity of such a degree as to bring the profession into disrepute.

Particulars:

1. At all material times the Practitioner held a practising certificate as a barrister and solicitor issued under the Act.

Appointment as welfare guardian and property manager

2. In early 2014 the Practitioner agreed to act as a "welfare guardian" and "property manager" in relation to Mrs KB (**Mrs B**).

3. Both appointments were made pursuant to the Protection of Personal and Property Rights Act 1988 (**the PPPRA**).

4. On 11 April 2014 the Practitioner swore three affidavits in relation to the appointment:

    a. "Affidavit of Nola Kay Dangen in support of Application for Property Order and Without Notice Application for Appointment of Temporary Property Manager". The affidavit included the following statements:

        i. "My relationship with [Mrs B] is that I have been asked to consent to being appointed as the subject person's welfare guardian and manager as I am a solicitor with many years of experience in this area…".

        ii. "I confirm that I am aware that I am not entitled to remuneration for my services unless directed by the Court at the time of making this order or any subsequent order."

        iii. "I confirm that I do not seek remuneration for my services".

        iv. "I confirm that all expenses reasonably incurred by me as a manager can be charged against the payable [sic] out of the property of [Mrs B]".

        v. "At this stage I do not envisage any expenses that are likely to be incurred in managing [Mrs B]'s property."

        vi. "I confirm that I am aware of my responsibilities to prepare and file in the Court statements containing prescribed particulars as referred to in Section 45 of the Act as to [Mrs B]'s property as follows:

1. Within three months of the date of the order;

2. Within 30 days following the expiry of each year during which my management continues;

3. Within 30 days as at the date of my ceasing to be manager."

b. "Affidavit of Nola Kay Dangen in support of Application for Appointment of Welfare Guardian and Manager". The affidavit included the following statements:

i. "That I am capable of carrying out the duties of a welfare guardian for [Mrs B] in a satisfactory manner, having regard both to the needs of the person and my professional standing".

ii. "I confirm that I am aware that I am not entitled to remuneration for my services".

iii. "I confirm that all expenses reasonably incurred by me as a welfare guardian can be charged against the payable [sic] out of the property of [Mrs B]".

iv. "At this stage I do not envisage any expenses that are likely to be incurred."

c. "Affidavit of Nola Kay Dangen in support of Application for Property Order". The affidavit included the following statements:

i. "My relationship with [Mrs B] is that I have been asked to consent to being appointed as [Mrs B]'s welfare guardian and manager as I am a solicitor with many years of experiences in this area…".

ii. "I confirm that I am aware that I am not entitled to remuneration for my services unless directed by the Court at the time of making this order or any subsequent order".

iii. "I confirm that I do not seek remuneration for my services".

iv. "I confirm that all expenses reasonably incurred by me as a manager can be charged against the payable [sic] out of the property of [Mrs B]".

v. "At this stage I do not envisage any expenses that are likely to be incurred in managing [Mrs B]'s property".

vi. "I confirm that I am aware of my responsibilities to prepare and file in the Court statements containing prescribed particulars as referred to in Section 45 of the Act as to [Mrs B]'s property as follows:

1. Within three months of the date of the order;

2. Within 30 days following the expiry of each year during which my management continues;

3. Within 30 days as at the date of my ceasing to be manager."

5. On 6 June 2014 Judge L de Jong appointed the Practitioner as a property manager and welfare guardian for Mrs B, pursuant to the PPPRA, with the consent of all parties.

6. Judge de Jong made the following comments in regards to the Practitioner's appointment:

> [9] There have been some concerns raised in Mr Kevin B's memorandum. As far as this Court is concerned, it has complete faith and confidence that Ms Dangen will be able to fulfil her responsibility as property manager and welfare guardian. She is well known to the Court and has a long association with the Auckland District Law Society. I am sure Mrs B, if she understood, would have great confidence in what Ms Dangen will be doing for her. Ms Dangen of course has legal responsibility as property manager to report to the Court on an annual basis.

7. On 6 June 2014 the Family Court at North Shore issued orders appointing the Practitioner as a property manager and welfare guardian for Mrs B.

8. The Practitioner acted as Mrs B's property manager and welfare guardian from 6 June 2014 until Mrs B's death on 17 September 2016.

Acting contrary to affidavits by claiming remuneration

9. Pursuant to Judge de Jong's decision dated 6 June 2014 and the Court orders, the Practitioner was not permitted to claim remuneration for her services, as either welfare guardian or property manager.

10. However during the period from 1 April 2014 to 17 September 2016 the Practitioner issued 13 invoices to Mrs B, claiming a total of $62,296.08 in remuneration as set out below:

Date	Fee	Disb.	GST	Total	Date paid
1 Apr 14	1,600.00	-	240.00	1,840.00	20 May 16
1 Jul 14	4,800.00	-	720.00	5,520.00	29 Mar 16
1 Aug 14	1,600.00	-	240.00	1,840.00	11 Apr 16
3 Jan 15	8,000.00	-	1,200.00	9,200.00	28 Apr 16
31 May 15	8,000.00	-	1,200.00	9,200.00	12 May 16
1 Nov 15	8,000.00	-	1,200.00	9,200.00	23 May 16
1 Apr 16	8,000.00	-	1,200.00	9,200.00	25 May 16
10 May 16	2,700.00	311.08	405.00	3,416.08	11 May 16
1 Jun 16	3,200.00	-	480.00	3,680.00	1 Jun 16
11 Jul 16	3,200.00	-	480.00	3,680.00	13 Jul 16
1 Aug 16	1,600.00	-	240.00	1,840.00	2 Aug 16
1 Sep 16	1,600.00	-	240.00	1,840.00	5 Sep 16
17 Sep 16	1,600.00	-	240.00	1,840.00	19 Sep 16
Totals	**53,900.00**	**311.08**	**8,085.00**	**62,296.08**	

11. All of the invoices were primarily handwritten.

12. All of the invoices were issued on a letterhead stating "Nola Dangen & Associates – Lawyers".

13. All of the invoices were stated to relate to a "consultancy".

14. All of the invoices were signed by the Practitioner on behalf of "Nola Dangen & Associates".

15. The Practitioner charged GST in relation to all of the invoices.

16. All of the invoices but one were calculated using the Practitioner's legal charge-out rate of $400 per hour.

17. The remaining invoice was calculated using a charge-out rate of $300 per hour.

18. Pursuant to the invoices dated 1 April 2014 and 1 July 2014, the Practitioner charged Mrs B for services she performed between March and May 2014 (i.e. prior to her appointment on 6 June 2014).

19. The Practitioner recorded some of her time, but she has been unable to provide comprehensive time records.

20. She did not record time on her invoices but says she billed her time based on records she kept and on the basis of an average four hours per month during the period of her appointment.

21. The Practitioner did not arrange for the invoices to be paid until after she received the proceeds from the sale of Mrs B's house in March and April 2016.

22. The Practitioner has not approached the Family Court at any stage to seek approval for her remuneration.

Acting outside of powers by entering into loan agreement

23. Pursuant to Judge de Jong's decision and the Court orders, the Practitioner had no ability to enter into loan agreements on Mrs B's behalf.

24. However on 7 July 2016 the Practitioner entered into a loan agreement on behalf of Mrs B in her role as Mrs B's property manager.

25. Under the agreement the Practitioner agreed to loan $20,000 to Ms KB, one of Mrs B's nieces.

26. Under the agreement KB was to use the money to purchase a road-worthy car to ensure that she could continue her support of Mrs B and her husband, Mr JB.

27. The terms of the loan included:

a. The loan was interest free, and payable on demand, provided that demand would not be made while KB remained JB's power of attorney.

b. If or when demand was made, the loan became payable within five years of the demand.

28. The money was advanced to KB from Mrs B's bank account in two tranches:

a. 15 July 2016 – $10,000.00.

b. 18 July 2016 – $10,000.00.

Failure to comply with filing obligations

29. The Practitioner filed the following documents in relation to her appointment:

a. an Annual Statement of Property dated 11 September 2015;

b. a Statement of Account for Mrs B for the period 12 September 2014 to 11 September 2015;

c. an Annual Statement of Property dated 8 October 2016; and

d. a Statement of Account for Mrs B for the period 12 September 2015 to 8 October 2016.

30. The Annual Statements of Property showed that Mrs B's only income during the period 12 September 2014 to 8 October 2016 were:

a. New Zealand superannuation.

b. Proceeds from the sale of Mrs B's house (totalling $399,291.50, received on 21 March 2016 and 27 April 2016).

c. Sundry income totalling $2,855.80.

31. The Practitioner did not comply with the following obligations:

a. Her obligation to prepare and file a statement within three months of the date of the order (i.e. by 6 September 2014).

b. Her obligation to prepare and file a statement within 30 days of 6 June 2015.

Therefore the Practitioner committed the charge as follows:

32. The Practitioner engaged in conduct which either individually or collectively amounted to negligence/incompetence under s 241(c).